

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 814 of 1997

with

CRIMINAL MISC. APPLICATION No.7383 OF 1997

in

CRIMINAL APPEAL No 814 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 - No

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LADHABHAI ALIAS RAJU BHANABHAI

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 814 of 1997  
MS BANNA S DUTTA for Petitioner  
MR DN PATEL, APP for Respondent No. 1
2. Criminal Misc.ApplicationNo 7383 of 1997  
MS BANNA S DUTTA for Petitioner  
MR DN PATEL, APP for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

Date of decision:16-10-1998

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

The appellant-original accused has preferred this appeal against the judgment and order passed by Additional Sessions Judge, Rajkot on 17th April, 1997 in Sessions Case No.89 of 1994 whereby he has been sentenced to undergo rigorous imprisonment for life and a fine of Rs.250/-, (in default, to suffer more rigorous imprisonment for one month) for an offence punishable under Sec.302 of Indian Penal Code.

2. The facts of the case in short are as under:

On 29-3-1994 at about 24.00 hours, the appellant-original accused, who was residing with his wife and children in Rajkot City, Behind Marketing Yard, Bedipara, Rajkot, sprinkled kerosene on his wife Badhuben after locking the door from inside as she has demanded money from him to visit her brother. When the deceased tried to run away, the accused set her on fire from backside, as a result of which, she sustained serious injuries. Thereafter, the accused shouted and tried to put quilt on her. On hearing this, other members and neighbours came there and deceased was taken to the Civil Hospital at Rajkot. Police was informed and her complaint was recorded. Executive Magistrate was called and he recorded the dying declaration of the deceased at exh.12. On 4th April, 1994, Badhuben succumbed to her injuries. Post-mortem was performed on the dead body of the deceased. After completing further investigation, Police submitted the charge-sheet against the accused. A charge was framed against the accused by the Additional Sessions Judge after having committed the case to the Court of Sessions. The accused pleaded not guilty to the charge. Further statement of the accused was recorded.

3. To prove the charge against the accused, the prosecution has produced documentary evidences and recorded the evidence of witnesses. After hearing the parties, the learned Additional Sessions Judge has recorded the above order of sentence against the accused.

4. At the initial stage, we have issued notice and called for the record and proceedings of this case. We have heard learned advocate, Ms.Banna Datta appearing on behalf of the appellant.

5. After going through the record, Ms.Banna Datta has argued that no eye witness has supported the

prosecution case and it mainly relied on the dying declaration and FIR, which are not trustworthy and reliable. The defence is that it was a case of accidental death due to bursting of stove or a suicide. She has further argued that even nearest relative, who is cousin-brother of the deceased, has not supported the say of the prosecution and therefore, it is a fit case wherein interference of this Court is absolutely necessary.

6. We have gone through the record and more particularly the dying declaration exh.12, FIR exh.47, post-mortem note exh.16 and yadi exh.17. We have also gone through the medical evidence alongwith the oral evidence of Dr.Anilkumar Gordandas Patel (P.W. No.16), Dr.Hineshkumar Ratubhai Adani (P.W. No.4) and also oral evidence of the Executive Magistrate-Bharatbhai Kotak (P.W. No.1).

7. It is to be noted that the doctor has clearly opined that the patient was conscious and was able to give her dying declaration which has been proved by the Executive Magistrate. It is deposed by the Executive Magistrate that as soon as he received the yadi exh.11 from the Police, he went to the hospital and enquired from the doctor about the injured-Badhuben and after asking formal questions, doctor informed him that injured was in a fit mental condition to give the dying declaration. So, dying declaration of Badhuben exh.12 was recorded by him in question-answer form. It was categorically stated by the deceased before the Executive Magistrate that as it was night time, they all were sleeping and nobody was there at the residence except she and her children. At that time, her husband came and sprinkled kerosene on her and threw lightened match-stick on her, when she tried to run away to save herself she came out with flames in burning condition stating that on her person quilt be thrown. So, there is no reason to disbelieve the dying declaration of the deceased. There is no law that the Court should not rely only on the dying declaration, but in the instant case, the dying declaration is trustworthy and reliable which is corroborated by FIR exh.47 and post-mortem report exh.16.

8. As regards the defence of the accused that it was an accidental death, no evidence is forthcoming to substantiate the same. In the post-mortem report exh.16, the doctor has categorically stated that there was no injury on her face and other parts of her body were intact and therefore, question of suicide also does not arise and accused cannot get the benefit of doubt only on

the ground that the cousin-brother of the deceased has not supported the prosecution and has been declared hostile. In our opinion, the prosecution has established and proved the case against the accused beyond reasonable doubt. Hence, the sentence recorded by the learned Additional Sessions Judge is proper and not required to be interfered with. Dineshbhai, P.W.17, who has proved panchnama exh.45 of the scene of offence establishes the presence of tin and bottle smelling of kerosene. No stove is found at the site. Thus, theory of accident is ruled out.

9. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10. In the facts and circumstances of the case, we do not interfere with the judgment and order passed by the learned Additional Sessions Judge, Rajkot in Sessions Case No.89 of 1994 on 17th April, 1997. Appeal is, therefore, required to be rejected and is accordingly rejected. Criminal Misc. Application also is rejected.

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